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Laura R. Grunzinger 47,616
Name of Attorney Registration No.

Signature of Attorney

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/038,170
Applicant(s) : Kott et al.
Filed : October 22, 2001
Title : IMPROVED ALKYLARYLS
TC/A.U. : 1751
Examiner : Necholus Ogden Jr.
Conf. No. : 8450
Docket No. : 6768CD
Customer No. : 27752

BRIEF ON APPEAL

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

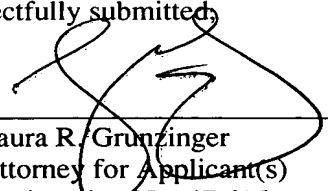
Dear Sir:

Enclosed, pursuant to 37 C.F.R. 1.192(a), is Appellant's brief on Appeal for the above application. The Brief is being forwarded in triplicate.

The fee for this Brief on Appeal is \$ 330.00 CFR 1.17(c).

The Director is hereby authorized to charge the above fee, or any additional fees that may be required, or credit any overpayment to Deposit Account No. 16-2480 in the name of The Procter & Gamble Company. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

By 
Laura R. Grunzinger
Attorney for Applicant(s)
Registration No. 47,616
(513) 627-1888

Date: September 9, 2004
Customer No. 27752

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Laura R. Gruninger
 Name of Attorney/Agent Registration No. 47,616

Signature of Attorney



IN THE UNITED STATES PATENT & TRADEMARK OFFICE
 RESPONSE/AMENDMENT

Mail Stop Non-Fee Amendment
 COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith is an AMENDMENT for the patent application:

Application No. : 10/038,170
 Applicant(s) : Kott et al.
 Filed : October 22, 2001
 Title : IMPROVED ALKYLARYLS
 TC/A.U. : 1751
 Examiner : Necholas Ogden Jr.
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1. ☒ No additional fees (claims fees or extension fees) are known to be required.
2. ☐ The fee has been calculated as shown below:

	(Col. 1)		(Col. 2)	(Col. 3)	OTHER THAN A SMALL ENTITY	
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA*	RATE	FEE
TOTAL	*	MINUS	**	=	x \$18 =	\$
INDEP.	*	MINUS	***	=	x \$86 =	\$
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM					+ \$290 =	\$
					TOTAL	\$

* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

** If the highest number of total claims previously paid for is less than 20, write "20" in this space.

*** If the highest number of independent claims previously paid for is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment or the number of claims originally filed.

3. ☒ The Commissioner is hereby petitioned under 37 CFR §1.136(a) to grant any extension of time needed for timely response to the Office Action dated in the above-identified application to preserve pendency of said application. The processing fee under 37 CFR §1.17 has been determined as follows: \$ for a -month extension of time.
4. The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 16-2480. A duplicate copy of this sheet is attached.
 - a. ☒ Any patent application processing fees under 37 CFR §1.16.
 - b. ☒ Any patent application processing fees under 37 CFR §1.17.
5. The Director is hereby authorized to make any additional copies of this sheet needed to accomplish the purposes provided for herein and to charge any fee for such copies to Deposit Account No. 16-2480.

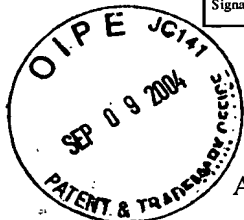
Laura R. Gruninger
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Date: September 9, 2004
 Customer No. 27752

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Laura R. Gruninger 47,616
Name of Attorney Registration No.

Signature of Attorney



P&G Case 6768CD

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/038,170
Applicant(s) : Kott et al.
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APPELLANT'S BRIEF

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

Dear Sir,

This is responsive to the Advisory Action mailed on May 12, 2004 in the above-captioned application, setting a two (2) month period from the date of the Notice of Appeal filed on July 9, 2004, for filing an Appellant's Brief. This Appellant's Brief is being filed in triplicate.

REAL PARTY IN INTEREST

This Application has been assigned to The Procter & Gamble Company of Cincinnati, Ohio. The Inventor(s), Kevin L. Kott, Jeffrey J. Scheibel, Thomas A. Cripe, Daniel S. Connor and Phillip K. Vinson, assigned their interest to the Procter & Gamble Company in an assignment corresponding to application Serial No. 09/479,365, filed December 19, 2002 (recorded on December 19, 2002, at reel number 013307, and frame number 0021).

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to the Appellant, or known to Appellant's legal representative, that will directly affect the Board's decision in the present appeal.

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STATUS OF CLAIMS

The present application was filed as a divisional application under 35 U.S.C. § 120 of U.S. Application Serial No. 09/479,365, filed January 7, 2000, which is a continuation of PCT International Application Serial No. PCT/IB98/01103, filed July 20, 1998; which claims priority to Provisional Application Serial No. 60/053,321, filed July 21, 1997. The application was originally filed with claims 1-9; a preliminary amendment filed on October 22, 2001, canceling claims 1-9 and added claims 10-42. Claims 10, 17, 26 and 34 were amended on November 12, 2002. Claims 11, 18, 28 and 35 have been canceled without prejudice (November 12, 2004). Claims 10, 12-17, 19-27, 29-34, and 36-42 were allowed on May 6, 2003 (Paper No. 8). A request for continued examination was filed July 31, 2003, with the submission of an Information Disclosure Statement (no amendment filed on this date). Claims 10, 13-17, 20-27, 30-34 and 37-42 were further amended on February 17, 2004. Claims 11, 12, 18, 19, 28, 29, 35 and 36 have been canceled without prejudice. An amendment mailed on March 4, 2004 has not been entered by the Examiner. Claims 10, 13-17, 20-27, 30-34 and 37-42 are pending and are finally rejected.

Appellant appeals the final rejection of May 12, 2004 (the Notice of Appeal for these claims was mailed on July 9, 2004 and received by the Office on July 9, 2004). A complete copy of the appealed claims is set forth in the Appendix.

STATUS OF AMENDMENTS

Appellants note that an amendment mailed on March 4, 2004, was not entered. No discussion of the March 4, 2004, amendments were made in the Final Office Action of May 12, 2004. However, Appellants further submit and request entry of amendment submitted herewith this appeal brief under 37 C.F.R. § 1.116 to place the presently rejected claims into consideration on appeal. Appellants submit that these amendments do not touch the merits of the application.

SUMMARY OF INVENTION

The present invention relates to a composition suitable as a source for making alkylarylsulfonate surfactants, wherein said composition comprises at least two isomers of a specified formula of an alkyl aromatic hydrocarbon compound.

ISSUES

Whether an intermediate compound claimed in the present application, while not described literally, but illustrated as a stable compound for transport for further processing to form the end product of the parent application was described in the specification in such a way

that one of skill in the relevant art would reasonably convey that the Appellants had possession of the claimed invention.

GROUPING OF CLAIMS

Claims 10, 13-17, 20-27, 30-34 and 37-42 stand or fall together.

ARGUMENTS

The Office Action states Claims 10, 12-17, 19-27, 29-34, 36-42 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Office Action further states that the claims contain subject matter not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), as the time the application was filed, had possession of the claimed invention, specifically sufficient description for the alkyl aromatic hydrocarbon composition as claimed.

35 U.S.C. § 112 provides, in relevant part, that:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

35 U.S.C. § 112, P 1 (2000). Three separate requirements are contained in that provision: (1) "the specification shall contain a written description of the invention"; (2) "the specification shall contain a written description . . . of the manner and process of making and using it [i.e., the invention] in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same"; and (3) "the specification . . . shall set forth the best mode contemplated by the inventor of carrying out his invention." University Of Rochester v. G.D. Searle & Co., Inc., 358 F.3d 916, 921 (Fed. Cir. 2004).

Those three requirements are referred to as the "written description requirement," the "enablement requirement," and the "best mode requirement," respectively. See Id. citing In re Moore, 439 F.2d 1232, 1235 (CCPA 1971). Although there is often significant overlap between the three requirements, they are nonetheless independent of each other. In re Alton, 76 F.3d 1168, 1172 (Fed. Cir. 1996). The purpose of the written description requirement is to "ensure that the scope of the right to exclude, as set forth in the claims, does not overreach the scope of the inventor's contribution to the field of art as described in the patent specification. Reiffin v. Microsoft Corp., 214 F.3d 1342, 1345 (Fed. Cir. 2000).

An applicant's specification must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, i.e., whatever is now claimed. Vas-Cath, Inc. v. Mahurkar, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991). The test for sufficiency of support in a parent application is whether the disclosure of the application relied upon "reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter." Ralston Purina Co. v. Far-Mar-Co., Inc., 227 USPQ 177, 179 (Fed. Cir. 1985). The subject matter of the claim need not be described literally (i.e., using the same terms or in *haec verba*) in order for the disclosure to satisfy the description requirement. See MPEP §2163.02. The inquiry into whether the description requirement is met must be determined on a case-by-case basis and is a question of fact. In re Wertheim, 191 USPQ 90, 96 (CCPA 1976). The examiner has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. In re Wertheim, 191 USPQ at 98.

The Office Action states that the claim(s) contain subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Office Action further specifies that the specification does not provide sufficient description for the alkyl aryl composition, specifically, the formula(s) as claimed. Appellants first submit that the summation in the Office Action does not meet the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in Appellants disclosure a description of the invention defined by the claims. See In re Wertheim, 191 USPQ at 98. The Office Action simply states a conclusion without explanation of why or how that conclusion was draw. As such, Appellants request that the rejection under 35 U.S.C. §112, first paragraph, be withdrawn.

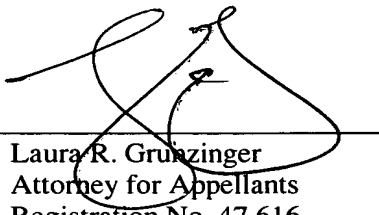
In the alternative, should the Examiner have met his initial burden, Appellants submit that the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, what was in possession of the invention, i.e., whatever is now claimed. Appellants submit that the claimed invention would have been understood with reasonable clarity to be in the possession of the Appellants to those skilled in the art. For instance, Example 1 gives a process for making an alkylbenzenesulfonate surfactant system. Step (b) recites an alkylation step of alkylating a lightly branched olefin with an aromatic hydrocarbon. Page 15, line 26. Example 1 specifically recites benzene as the aromatic hydrocarbon. Page 15, lines 26-30. An alkylaromatic hydrocarbon, specifically an alkylbenzene product results. Page 15, lines 33-37. Example 1 then further recites that the alkylbenzene can then be shipped to a remote manufacturing facility. Page

15, line 37 – page 16, line 1. One of skill in the art will recognize the claimed composition of the present invention as the product of step(b) of Example 1. Similarly, Examples 3 and 4 also would be recognized by one of skill in the art as teaching the claimed composition of the present invention. As such, the intermediate product of the Examples 1, 3 and 4 now claimed by the present application would have been recognized by one of skill in the art as being in the possession of the Appellants. Therefore Appellants submit that the claimed invention of the present application meets the requirements of 35 U.S.C. § 112, first paragraph, for the written description. Appellants respectfully request that the rejection be withdrawn.

SUMMARY

In view of all of the above, Appellant respectfully submits that Claims 10, 13-17, 20-27, 30-34 and 37-42 are sufficiently described in the specification of the present application such that the claimed invention would have been conveyed to one skilled in the relevant art that the Appellants, at the time the application was filed, had possession of the claimed invention.

Respectfully submitted,

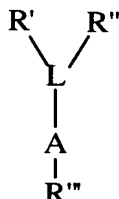
By 
Laura R. Grunzinger
Attorney for Appellants
Registration No. 47,616
Tele. No. (513) 627-1888

Date: September 9, 2004

Customer No. 27752

APPENDIX

10. An composition suitable as a source for making alkylarylsulfonate surfactants, wherein said composition comprises at least two isomers of the formula:



wherein:

L is an acyclic aliphatic hydrocarbyl of from 6 to 18 carbon atoms in total;

R' is selected from H and C₁ to C₃ alkyl;

R'' is selected from H and C₁ to C₃ alkyl;

both R' and R'' are nonterminally attached to L and at least one of R' and R'' is C₁ to C₃ alkyl;

R''' is selected from H and C₁ to C₃ alkyl; and

A is an aromatic hydrocarbon selected from the group consisting of benzene, toluene, xylene, naphthalene, and mixtures thereof;

wherein:

said alkylaryl composition comprises two or more isomers with respect to positions of attachment of R', R'' and A to L;

in at least about 60% of said alkylaryl composition, A is attached to L in the position which is selected from positions alpha- and beta- to either of the two terminal carbon atoms thereof; and

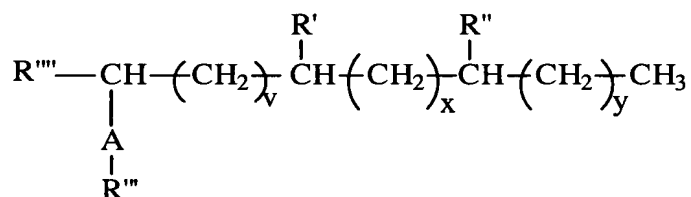
wherein further said alkylaryl composition has a ratio of nonquaternary to quaternary carbon atoms in L of at least about 10:1 by weight, when said quaternary carbon atoms are present.

11. (canceled)

12. (canceled)

13. The composition according to Claim 2 wherein A is benzene.

14. The composition according to Claim 2 wherein A is toluene.
15. The composition according to Claim 1 wherein one of R' and R'' is methyl or ethyl.
16. The composition according to Claim 1 wherein one of R' and R'' is methyl.
17. An composition suitable as a source for making alkylarylsulfonate surfactants, wherein said composition comprises at least two isomers, counted exclusive of ortho-, meta-, para-, and stereoisomers, of the formula:



wherein A is an aromatic hydrocarbon selected from the group consisting of benzene, toluene, xylene, naphthalene, and mixtures thereof; R''' is selected from H and C₁ to C₃ alkyl; R' is selected from hydrogen and C₁ to C₃ alkyl; R'' is selected from hydrogen and C₁ to C₃ alkyl; and R''' is selected from hydrogen and C₁ to C₄ alkyl; v is an integer from 0 to 10; x is an integer from 0 to 10; y is an integer from 0 to 10;
wherein:

the total number of carbon atoms attached to A is less than about 20;

said composition comprises two or more isomers with respect to positions of attachment of R', R'' and A to the moiety

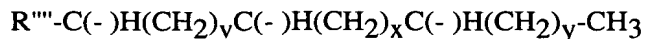
R'''-C(-)H(CH₂)_vC(-)H(CH₂)_xC(-)H(CH₂)_y-CH₃ of this formula;

at least one of R' and R'' is C₁ to C₃ alkyl; when R''' is C₁, the sum of v + x + y is at least 1; and when R''' is H, the sum of v + x + y is at least 2; and

in at least about 60% of said alkylaryl composition, A is attached to the moiety

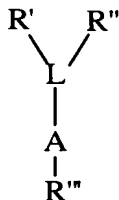
R'''-C(-)H(CH₂)_vC(-)H(CH₂)_xC(-)H(CH₂)_y-CH₃ in the position which is selected from positions alpha- and beta- to either of the two terminal carbon atoms thereof;

wherein further said composition has a ratio of nonquaternary to quaternary carbon atoms in the moiety



of at least about 10:1 by weight, when said quaternary carbon atoms are present.

18. (canceled)
19. (canceled)
20. The composition according to Claim 8 wherein A is benzene.
21. The composition according to Claim 8 wherein A is toluene.
22. The composition according to Claim 7 wherein one of R' and R'' is methyl or ethyl.
23. The composition according to Claim 7 wherein one of R' and R'' is methyl.
24. The composition according to Claim 7 wherein at least about 80% of said composition, A is attached to $R'''-CH(CH_2)_vCH(CH_2)_xCH(CH_2)_y-CH_3$ in the position which is selected from positions alpha- and beta- to either of the two terminal carbon atoms thereof.
25. The composition according to Claim 7 wherein R''' is hydrogen, methyl or ethyl.
26. An composition suitable as a source for making alkylarylsulfonate surfactants, wherein said composition comprises:
 - a) from about 0.01% to about 99.99% by weight of an composition comprising at least two isomers of the formula:



wherein:

L is an acyclic aliphatic hydrocarbyl of from 6 to 18 carbon atoms in total;

R' is selected from H and C₁ to C₃ alkyl;

R" is selected from H and C₁ to C₃ alkyl;

both R' and R" are nonterminally attached to L and at least one of R' and R" is C₁ to C₃ alkyl;

R''' is selected from H and C₁ to C₃ alkyl; and

A is an aromatic hydrocarbon selected from the group consisting of benzene, toluene, xylene, naphthalene, and mixtures thereof;

wherein:

said composition comprises two or more isomers with respect to positions of attachment of R', R" and A to L;

in at least about 60% of said composition, A is attached to L in the position which is selected from positions alpha- and beta- to either of the two terminal carbon atoms thereof; and

wherein further said composition has a ratio of nonquaternary to quaternary carbon atoms in L of at least about 10:1 by weight, when said quaternary carbon atoms are present; and

b) from about 0.01% to about 99.99% by weight of at least one isomer of the linear analog of said composition of (a).

27. The composition according to Claim 15 wherein at least about 80% of said composition, A is attached to L in the position which is selected from positions alpha- and beta- to either of the two terminal carbon atoms thereof.

28. (canceled)

29. (canceled)

30. The composition according to Claim 17 wherein A is benzene.

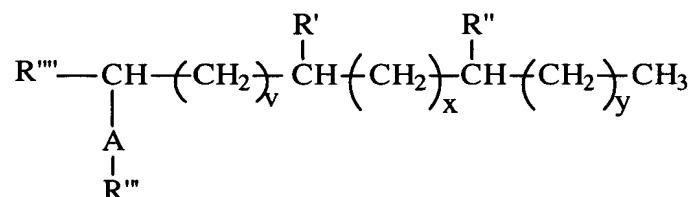
31. The composition according to Claim 17 wherein A is toluene.

32. The composition according to Claim 15 wherein one of R' and R" is methyl or ethyl.

33. The composition according to Claim 20 wherein one of R' and R" is methyl.

34. An composition suitable as a source for making alkylarylsulfonate surfactants, wherein said composition comprises:

a) from about 0.01% to about 99.99% by weight of an composition comprising at least two isomers, counted exclusive of ortho-, meta-, para- and stereoisomers, of an alkylaryl of the formula:



wherein A is an aromatic hydrocarbon selected from the group consisting of benzene, toluene, xylene, naphthalene, and mixtures thereof; R''' is selected from H and C₁ to C₃ alkyl; R' is selected from hydrogen and C₁ to C₃ alkyl; R'' is selected from hydrogen and C₁ to C₃ alkyl; and R'''' is selected from hydrogen and C₁ to C₄ alkyl; v is an integer from 0 to 10; x is an integer from 0 to 10; y is an integer from 0 to 10;

wherein:

the total number of carbon atoms attached to A is less than about 20;

said composition comprises two or more isomers with respect to positions of attachment of R', R'' and A to the moiety

R''''-C(-)H(CH₂)_vC(-)H(CH₂)_xC(-)H(CH₂)_y-CH₃ of this formula;

at least one of R' and R'' is C₁ to C₃ alkyl; when R'''' is C₁, the sum of v + x + y is at least 1; and when R'''' is H, the sum of v + x + y is at least 2; and

in at least about 60% of said composition, A is attached to the moiety

R''''-C(-)H(CH₂)_vC(-)H(CH₂)_xC(-)H(CH₂)_y-CH₃ in the position which is selected from positions alpha- and beta- to either of the two terminal carbon atoms thereof;

wherein further said composition has a ratio of nonquaternary to quaternary carbon atoms in the moiety

R''''-C(-)H(CH₂)_vC(-)H(CH₂)_xC(-)H(CH₂)_y-CH₃

of at least about 10:1 by weight, when said quaternary carbon atoms are present; and

b) from about 0.01% to about 99.99% by weight of at least one isomer of the linear analog of said composition of (a).

35. (canceled)

36. (canceled)

37. The composition according to Claim 23 wherein A is benzene.

38. The composition according to Claim 23 wherein A is toluene.

39. The composition according to Claim 22 wherein one of R' and R'' is methyl or ethyl.

40. The composition according to Claim 26 wherein one of R' and R'' is methyl.

41. The composition according to Claims 22 wherein at least about 80% of said composition, A is attached to R'''-CH(CH₂)_vCH(CH₂)_xCH(CH₂)_y-CH₃ in the position which is selected from positions alpha- and beta- to either of the two terminal carbon atoms thereof.

42. The composition according to Claim 22 wherein R''' is hydrogen, methyl or ethyl.